IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. _____

HORACE H. HILL, SR. and
PAULINE A. HILL,

Petitioners,

vs.

CHARLEEN JO HILL,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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A. Opinion of the Court of Appeal of the State of California, Second Appellate District

B. Opinion of the Supreme Court of the State of California.

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A. Opinion of the Court of Appeal of the State of California, Second Appellate District.

B. Opinion of the Supreme Court of the State of California.

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IN THE SUPREME COURT OF THE UNITED STATES

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HORACE H. HILL, SR. and
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vs.

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PETITION FOR A WRIT OF CERTIORART
TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

The petitioners, Horace H. Hill, Sr. and Pauline A. Hill, pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of California rendered in these proceedings on April 19, 1972.

OPINIONS BELOW

The opinion of the Court of Appeal,

Second Appellate District, has not yet been officially reported but is unofficially reported in 100 Cal. Rptr. 458. It is reproduced in Appendix A to this Petition.

The Supreme Court of California rendered no opinion in denying petition for hearing on April 19, 1972. It is reproduced in Appendix B to this Petition.

JURISDICTION

The Judgment of the Supreme Court of California denying Petition for Hearing was entered April 19, 1972. This Petition for Certiorari was filed within ninety days from said date. The jurisdiction of this Court is invoked under

1) 28 U.S.C. §1257 (3); and,

2) Division of opinion among State and Circuit Courts of Appeal upon a point of federal law.

QUESTIONS PRESENTED

1) Does the construction of 38 U.S.C. §770 (a) of the Servicemen's Group Life Insurance Act (38 U.S.C. §§765 et seq) require the filing and receipt of the designated form as the sole and exclusive method by which a serviceman insured under said statute may effect a change of beneficiary?

2) Is the established construction of the National Service Life Insurance Act (38 U.S.C. §701 et seq) permitting change of beneficiary upon proof of the deceased serviceman's intent together with an overt act to effectuate such intent applicable to the Servicemen's Group Life Insurance Act (38 U.S.C. §765 et seq)?

STATUTORY PROVISIONS INVOLVED

38 U.S.C. §770 (a) relating to the designation of beneficiaries under the Servicemen's Group Life Insurance Act

QUESTIONS PRESENTED

1) Does the construction of 38 U.S.C. §3720 (a) of the Servicemen's Group Life Insurance Act (38 U.S.C. §1965 et seq) requires the filing and receipt of the designated form as the sole and exclusive method by which a serviceman insured under said statute may effect a change of beneficiary

2) Is the established Construction of the National Service Life Insurance Act (38 U.S.C. §701 et seq) permitting change of beneficiary upon proof of the deceased serviceman's intent together with an overt act to effectuate such change applicable to the Serviceman's Group Life Insurance Act (38 U.S.C. §1965 et seq)?

STATUTES AND REGULATIONS INVOLVED

38 U.S.C. §770 (a) relating to the designation of beneficiaries under the Serviceman's Group Life Insurance Act

(38 U.S.C. §765 et seq) the pertinent portion of which provided:

> "(a) Any amount of insurance under this sub-chapter in force on any member or former member on the date of his death shall be paid, upon the establishment of a valid claim therefor to the person or persons surviving at the date of his death, in the following order of precedence:
>
> First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received in the uniformed services prior to such death;..."

STATEMENT OF THE CASE

Petitioners are the natural parents of a deceased serviceman insured under the provisions of the Servicemen's Group Life Insurance Act (38 U.S.C. §765 et seq, hereinafter sometimes referred to as S.G.L.I.).

The deceased married the respondent on March 11, 1966 and subsequently cancelled the prior designation of petitioners as beneficiaries, thereby resulting in the automatic designation of respondent as

the sole beneficiary.

Respondent initiated an action for divorce against the deceased insured on October 17, 1968. Thereafter, on October 28, 1968, in accordance with the provisions of the S.G.L.I., the insured properly executed and filed with the John Hancock Insurance Company an application for insurance and conversion of his S.G.L.I. policy to a private individual policy. Both the application for insurance and the application for conversion designated the petitioners as sole beneficiaries. By its terms, the S.G.L.I. policy was to expire within a short time thereafter and further action was deemed unnecessary since it would be superceded by the new policy. At the time of the insured's untimely death the S.G.L.I. policy had not yet expired and the new private policy was not yet issued.

the sole beneficiary.

Respondent initiated an action for divorce against the deceased insured on October 17, 1958. Thereafter, on October 18, 1958, in accordance with the provisions of the S.C.D.I., the insured properly executed and filed with the John Hancock Insurance Company an application for insurance and conversion of his S.C.D.I. policy to a private individual policy. Both the application for insurance and the application for conversion designated the petitioners as sole beneficiaries. By its terms, the S.C.D.I. policy was to expire within a short time thereafter and further action was deemed unnecessary since it would be supersede by the new policy. At the time of the insured's untimely death the S.C.D.I. policy had not yet expired and the new private policy was not yet issued.

The insured's intended beneficiary under the S.G.L.I. policy is undisputed. The evidence shows clearly that the deceased wished the petitioners to be the beneficiaries rather than the respondent, who was suing him for divorce.

This action was commenced in the Superior Court of the State of California by the Prudential Insurance Company of America by its complaint in Interpleader against the petitioners and respondent acknowledging the existence of an S.G.L.I. policy upon the deceased serviceman's life and the amount owed thereunder, and requested that the court order petitioners and respondent to litigate their claims under 38 U.S.C. §765 et seq.

Petitioners and respondent then filed answers and cross complaints claiming the proceeds under the policy. Summary judgment was granted.

Petitioners appealed to the Court of Appeal, Second Appellate District, Division Five, State of California. That Court issued its opinion on February 24, 1972, affirming the trial court's judgment. A copy of that opinion is set forth in the appendix A hereto.

Petitioners then sought a hearing by the Supreme Court of California, which was denied without written opinion on April 19, 1972.

HOW THE FEDERAL QUESTION WAS RAISED

The federal questions sought to be reviewed here were first raised in the Superior Court by Petitioners' Points and Authorities in Opposition to Respondent's Motion for Summary Judgment. Petitioners argued that the Servicemen's Group Life Insurance Act (38 U.S.C. §765 et seq) should be interpreted to allow the insured to change beneficiaries by means other

Petitioners appealed to the Court
of Appeal, Second Appellate District,
Division Five, State of California. That
court issued its opinion on February 24,
1972, affirming the trial court's judgment.
A copy of that opinion is set forth in
the Appendix A hereto.

Petitioners then sought a hearing
by the Supreme Court of California, which
was denied without written opinion on
April 19, 1972.

NON-FEDERAL QUESTION NOT RAISED

The federal questions sought to be reviewed here were first raised in the Superior Court by Petitioners' Points and Authorities in Opposition to Respondent's Motion for Summary Judgment. Petitioners argued that the Petitioner's Home Life Insurance Co. (U.S.A., Ltd. or any) should be interpreted to allow the insured to change beneficiaries by means other

than strict compliance with the technical requirements of the statute in like manner as permitted under the National Service Life Insurance Act (38 U.S.C. §701 et seq). Respondent argued that the former law had been changed by Stribling v. U.S., 419 Fed. 2d. 1350 (8th Cir. 1969). On the basis of the Stribling decision respondent's motion for summary judgment was granted on December 24, 1971.

Petitioners filed notice of intent to appeal to the Court of Appeal and in their briefs argued:

1) That the procedure provided in 38 U.S.C. §770 (a) for the designation of beneficiaries was not exclusive.

2) That the enactment of 38 U.S.C. §§765 et seq. did not change the law pertaining to the change of beneficiaries followed under the N.S.L.I.

3) That strict compliance with regulations regarding change of bene-

ficiaries is not required where the insurer does not raise the issue.

The Court of Appeal issued its written opinion on February 24, 1972, affirming the trial court. In its written opinion the Court of Appeal recognized the disturbing and inequitable results of its decision but felt bound to follow the Stribling case.

Petitioners then appealed to the Supreme Court of California for a hearing urging:

1) That the decision in Stribling does not state the correct rule of law applicable to the designation of beneficiaries under 38 U.S.C. §770 (a).

2) That the legislative intent deduced by the court in Stribling is erroneous and not binding upon the Court.

The California Supreme Court denied petitioners' request for hearing without

written opinion on April 19, 1972. That judgment is final.

REASONS FOR GRANTING THE WRIT

1) The decision below is in conflict with Federal and Appellate court decisions interpreting 38 U.S.C. §770 (a).

The construction and interpretation of the Servicemen's Group Life Insurance Act has been very closely tied to that of its predecessor, the National Service Life Insurance Act. See the annotation at 2 A.L.R. 2d. 489 et seq. for collection of cases. The cases cited and discussed there establish that under the N.S.L.I. technical legal compliance with the Act was not required and that the insured serviceman's clearly manifested intent was the controlling element in determining the beneficiary of the policy.

It has been established that the decisions dealing with the National

Service Life Insurance Act (38 U.S.C. §701 et seq) are pertinent and applicable to cases arising under the Servicemen's Group Life Insurance Act (38 U.S.C. §765 et seq). See Shannon v. U.S., 415 F. 2d 256 (5th Cir. 1969); Geis v. U.S., 404 F. 2d 157 (9th Cir. 1968); Behrens v. U.S., 299 F. 2d 662 (9th Cir. 1962); Aguilar v. U.S., 226 F. 2d 414 (9th Cir. 1955); Davenport v. Servicemen's Group Life Insurance, 119 Ga. App. 685, 168 SE 2d 621 (1969).

These cases are of a long unbroken line of decisions dating back nearly forty years favoring manifested intent over technical legal requirements. According to that rule the technical statutory requirements under government sponsored servicemen's life insurance programs were not interpreted in such a way as to obstruct and override the clearly manifested

intent of the insured regarding his designation of beneficiary.

The rule was therefore established that a change of beneficiaries under 38 U.S.C. §770 (a) could be accomplished not only by filing the designated form but also by proof of the insured's intent coupled with his overt act toward effectuating the change.

Stribling is in direct conflict with this long established rule. The strict literal interpretation by Stribling of 38 U.S.C. §770 (a) is based solely upon an erroneous interpretation of legislative intent.

The proper interpretation of 38 U.S.C. §770 (a) is therefor put in direct issue and can only be resolved by the action of this Court.

2) The interpretation created by

the Stribling decision raises an issue of great public importance.

The provisions of 38 U.S.C. §770 (a) apply to each and every member of our Armed Forces. Their natural concern is that the proceeds from such insurance be paid to the person they intend to benefit. If the rule in Stribling is permitted to stand the right of insured servicemen to change beneficiaries will be circumscribed by administrative technicalities and result in proceeds being paid to those not intended to benefit. Such a result is clearly not in the best interests of our servicemen in uniform

A contrary result was reached in Davenport v. Servicemen's Group Life Insurance, 119 Ga. App. 685, 168 SE 2d 621 (1969), in which the Court held that the long established rule of the N.S.L.I. cases were clearly applicable to the

S.G.L.I. cases, thus creating a direct conflict between the Eight United States Circuit and the state courts of Georgia. Likewise, the case at bar creates a like conflict in law which must be clarified by this Court.

3) The interpretation of Congressional intent regarding 38 U.S.C. §770 (a) by the Court in Stribling is erroneous and without basis.

The amendment of 5 U.S.C. §8705 (a) of the Federal Employees Group Life Insurance Act (hereinafter sometimes referred to as F.E.G.L.I.) in 1967 is relied on by Stribling as the only support for its interpretation of Congress' intent regarding 38 U.S.C. §770 (a). In that amendment Congress made clear its intent that federal civilian employees insured under the F.E.G.L.I.

were to change beneficiaries only by compliance with technical statutory procedures.

Stribling takes a giant illogical leap and concludes that Congress intended the same interpretation to apply to 38 U.S.C. §770 (a) of the S.G.L.I. Such a conclusion is unsound, unreasonable and without foundation.

The traditional national policy followed by Congress toward servicemen in uniform has been well documented. It has been one of benevolent paternal concern for the welfare of servicemen who for the most part serve not by choice but by circumstance. When called upon to serve their country they suffer great hardship, sacrifice and often death in the defense of their country. Congress, recognizing these special sacrifices, has taken steps to reward servicemen for their service.

The "manifest intent" rule interpreting 38 U.S.C. §770 (a) is a manifestation of this national policy. For a national committment established nearly half a century to be reversed without a clear and concise Congressional action is unreasonable.

The analogy drawn between the F.E.G.L.I. and the S.G.L.I. is unconvincing when viewed in light of the obvious differences. Congress enacted separate programs to serve the needs of two distinct class of persons: one civilian and the other military. The very fact that two programs were enacted evidences the distinct and separate needs of servicemen over civilians. The interpretation of each program must therefore be separate and apart from the other.

Congress was aware of the long established "manifest intent" rule inter-

preting 38 U.S.C. §770 (a). Had it wished to reverse this rule it would reasonably and logically have acted clearly and directly upon the S.G.L.I.

It can only be concluded that Congress amended the F.E.G.L.I. solely for the purpose of affecting civilian employees and not to overrule indirectly the long established "manifest intent" rule applicable to military personnel under the N.S.L.I. and S.G.L.I. In fact by its amendment of the F.E.G.L.I. without likewise amending the N.S.L.I. and S.G.L.I., Congress re-emphasized the different position of federal civilian employees as compared to military personnel

CONCLUSION

In order to establish uniformity in the construction of the Servicemen's Group Life Insurance, as it affects millions of the members of our military

services, it is important that this Court review this matter, and it is therefore respectfully prayed that this Petition for Writ of Certiorari be granted.

Respectfully submitted

FREDERIK W. CHEL

RAYMOND C. SIMPSON

Counsel for Petitioners

CERTIFIED FOR PUBLI

23 C.A.3d 760

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CHARLEEN JO HILL,

Cross-Complainant and Respondent

v.

HORACE H. HILL, SR. and PAULINE A. HILL,

Cross-Defendants and Appellants

COURT OF APPEAL - SECOND DIST.
FILED
FEB 24 1972
CLAY ROBBINS, JR.

2d Civ. No. 38394
S.C. No. 958809

APPEAL from a judgment of the Superior Court of Los Angeles County. John L. Cole, Judge. Affirmed.

Frederik W. Chel for Cross-Defendants and Appellants.

Kenneth S. Lawson for Cross-Complainant and Respondent.

This action was commenced by the Prudential Insurance Company of America by its complaint in Interpleader against the natural parents of decedent (the appellants here) and against the legal widow of decedent (the respondent). Prudential's complaint alleged the existence of a Servicemen's Group Life Insurance Policy upon the life of decedent, acknowledged the amount owing thereunder, and requested the court to order defendants (the appellants and respondent here), who had all made claim to the proceeds, to litigate their claims. The appellants and the respondent both filed answers and cross-complaints, claiming the proceeds under said policy. The trial court granted a summary judgment on the widow's motion, and ordered the proceeds of the policy be paid to her. The parents of decedent appeal.

Decedent entered the military service in September 1965, and was honorably discharged in September 1968. After entering the service, and on September 29, 1965, Prudential issued its group policy No. G-32000 to decedent in accordance with the Servicemen's Group Life Insurance Act of 1965 which provided $10,000 insurance benefits. Decedent married respondent on March 11, 1966. On November 16, 1967, decedent executed VA Form 29-8286 ("Servicemen's Group Life Insurance Election") in which he "CANCEL[LED] PRIOR DESIGNATION [of beneficiary]." Decedent's prior designation of beneficiary is not in evidence since, according to Prudential, "it would in the normal course have been destroyed" when decedent cancelled his prior designation.

However, by the terms of VA Form 29-8286, when decedent executed that form on November 16, 1967, which was subsequent to the date of his marriage, he thereby elected to make his wife the beneficiary.[1/] On October 17, 1968, decedent commenced an action for divorce,

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1/ "Do not complete this form unless you wish to change the automatic features of the Servicemen's Group Life Insurance.

"The automatic features provide $10,000 life insurance . . . to your survivor(s) in the following order:

"1. Widow or widower; if none, it is payable to
"2. Child or children . . .; if none, it is payable to . . .
"3. Parent(s) in equal shares . . ."

"DESIGNATION OF BENEFICIARY
"
. . . . . .
"Cancellation of a prior Designation of Beneficiary may be effected without naming a new beneficiary by executing a new VA Form 29-8286 and inserting in the space provided for the name of the beneficiary, the words, "Cancel Prior Deisgnation". The effect of this will be to have the payment made in accordance with the automatic features above."

which action was still pending on the date of his death. On October 28, 1968, approximately five weeks prior to the date of his death, under the conversion clause of the Servicemen's Group Life Insurance Act, decedent properly executed and sent to John Hancock Insurance Company an application for insurance designating his mother as beneficiary, or, if she predeceased decedent, then his father. At the time of decedent's death, the John Hancock Insurance Company had not issued its policy. The Prudential policy would have expired a few days after decedent's death, as said policy was in effect under the Servicemen's Group Life Insurance Act for a period of 120 days from the date of decedent's discharge from the Uniformed Services.

The sole issue on appeal is posed in respondent's brief: "Did the trial court err in holding, as a matter of law, that a member of the Armed

Forces cannot effect a valid change of beneficiary on an insurance policy issued under the Servicemen's Group Life Insurance Act (38 U.S.C. § 765 et seq.) except through the use of the designated form filed with the Uniformed Services, even though the serviceman intended to change beneficiaries and executed and submitted forms to effectuate such intent?"

In determining this issue, we are confronted with disturbing facts. As the trial court said in its memorandum opinion in favor of respondent: "The court reaches this conclusion reluctantly because the equities are entirely with the [parents]. Such equities were obviously in the mind of the Georgia Court in Davenport v. Servicemen's Group Life Insurance Co., 168 SE 2d 621 . . . . Such equities are also behind the former rule that the courts will do everything in their power to adopt a liberal policy favoring beneficiary changes, e.g., Stribling v. U.S. (8 Cir. 1969) 419

Fed. 2d 1350. It clearly also used to be the law that in order for a serviceman to change beneficiaries, only two requirements must be met: The serviceman must have intended to change beneficiaries and must have manifested that intent by an affirmative and overt act. Behrens v. U.S., 299 Fed. 2d 662, 9th Cir. (1962). Under the law relating to the former National Service Life Insurance, the intent of the serviceman was the key factor. If this Court could apply that law, it would hold in favor of the parents of decedent." However, like the trial court, we cannot escape the result compelled by the rationale of Stribling, 2/ supra.

2/ There can be no doubt that the federal cases are strong authority, if not compelling, in the instant case.

The pertinent portion of the Servicemen's Group Life Insurance Act (38 U.S.C., § 770 (a)) relating to the designation of beneficiaries provides:

> "(a) Any amount of insurance under this subchapter in force on any member or former member on the date of his death shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date of his death, in the following order of precedence:
>
> "First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received in the uniformed services prior to such death;
>
> . . . ."

Appellants would have us adopt what has become known as the "liberal policy," rather than a "strict" construction of the statutory language. The liberal policy was adopted over the years in a line of decisions relative

to the National Service Life Insurance Act of 1940 (38 U.S.C., §§ 701 et seq.), the United States Government Life Insurance Act (38 U.S.C., §§ 740, et seq.), and the regulations promulgated pursuant thereto. That "liberal policy" effectuated a change of beneficiary upon proof of only two conditions: First, that the serviceman intended to change the beneficiary of his particular policy, and second, that he performed some overt act directed toward accomplishing that end.[3/] The argument in support of the liberal policy is that Congress, being aware of the judicial interpretation of existing servicemen's life insurance acts, did not intend to alter that policy when the Servicemen's Group Life Insurance Act was enacted.

3/ See Annotation, 2 A.L.R.2d 489, et seq. for collection of cases. The leading cases supporting this rule are: Behrens v. U.S. (1962) 299 F.2d 662; Aguilar v. U.S. (1955) 226 F.2d 414; and Kending v. Kending (1948) 170 F.2d 750, all from the 9th Circuit.)

When seeking legislative intent as to a statute, it is useful to consider language and legislative construction of another statute enacted for a similar purpose and containing similar language, even though not strictly in pari materia with the one under consideration. (See Overstreet v. North Shore Corp. (1943) 318 U.S. 125, 131-132, 68 S.Ct. 494, 87 L.Ed. 656.) 4/

The relevant provisions of the Act involved here were modeled after the provisions of the Federal Employee's Group Life Insurance Act of 1954 (Pub. L. No 598, ch. 752, 68 Stat., 736 et seq., as amended 5 U.S.C

4/ The rule is stated in III Sutherland, Statutes and Construction (3d Ed. 1943), § 6102 at p. 159: "By referring to other similar legislation the court is able to learn the purpose and course of legislation in general, and by transposing the clear intent expressed in one or several statutes to a similar statute of doubtful meaning, the court not only is able to give effect to the probable intent of the legislature, but also to establish a more uniform and logical system of law. [Footnote omitted.]"

§§ 8701, et seq.). Both provide automatic insurance coverage for persons within a particular group desired to be protected, absent individual disavowal of the benefit. Each differs from prior government-sponsored similar programs by providing that private insurance companies are to provide the coverage. In each, the designation of beneficiary provisions within the Acts are virtually identical, and each requires that such designation be in writing and received "in the employing office" or "in the uniformed services." Prior to 1967, the Federal Employee's Group Life Insurance Act, (5 U.S.C., § 8705(a)) provided in relevant part:

> "The amount of group life insurance and group accidental death insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:

"First, to the beneficiary or beneficiaries designated by the employee in a writing received in the employing office before death."

This second paragraph above was amended in 1967 to read as follows (the amended portion is underscored):

"First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office . . . . For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

The Senate Report[5/] on the amendment stated it was "To clarify Congress's intent . . . " The amendment

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5/ S.Rep. No. 1064 to H.R. 432, 2 U.S. Code Cong. & Admin. News, 89th Cong., 2d Sess. 2070, 2071 (1966).

was to negate the decision of Sears v. Austin (9 Cir. 1961) 292 F.2d 690, which had construed the "prior 1967" phraseology (as quoted above) in the manner termed the "liberal policy."[6/] The Senate Report further stated: "[T]he precedent established in [Sears] could, if generally followed, result in administrative difficulties for the Civil Service Commission and the insurance companies and, more important, seriously delay paying insurance benefits to survivors of Federal employees." This identical concern is equally applicable to the private insurance companies, such as Prudential here, under the Servicemen's Group Life Insurance Act. It cannot be argued that the 1967 amendment was for any purpose other than to require a "strict" construction of that statute. The similarity of the

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6/ In Sears, the court allowed a beneficiary designated in the insured's holographic will to recover the insurance proceeds even though the insured had not previously designated a beneficiary, and his will had not been filed in his employing office before death.

Federal Employee's Group Life Insurance Act to the Servicemen's Group Life Insurance Act, as we have already explained, requires that the same strict construction be applied to the latter Act under the Congressional declaration of what it intended the original language of the Federal Employee's Life Insurance Act to mean, even though a like amendment to the Servicemen's Group Life Insurance Act was apparently deemed unnecessary.[6/] In the Federal Employee's Group Life Insurance Act, Congress made certain its intent to have the provisions for designation of beneficiary strictly construed. The amendment there was not to change what it had said, but rather to eliminate any construction of its words not in conformity with its avowed intent. As we

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6/ Research by counsel for both parties as well as our own has uncovered no judicial declaration upon that subject relative to the Servicemen's Group Life Insurance Act.

have noted, the language used in the Federal Employee's Group Insurance Act before amendment and the language of the Servicemen's Group Life Insurance Act are identical. It would be unreasonable to conclude that, in the face of the declaration of intent subsequently made in the Federal Employee's Act, the Congress in fact intended a different construction of the statute before us.

As we have heretofore stated, the effect of decedent's cancellation of prior designation of beneficiary did in fact designate the intended beneficiary of his Servicemen's insurance policy in the order of priority designated upon the form required to be filed with the uniformed services. At the time he contracted for the Hancock policy, for whatever reason he may have had, and obviously with no expectation by him that he would not outlive the term of the Servicemen's policy, he chose not to file a change of beneficiary in the manner specified by the Act, and, in the light of his

having once before filed such a document, presumably knew what was required of him.

The judgment is affirmed.

CERTIFIED FOR PUBLICATION.

STEPHENS, J.

We concur:

KAUS, P.J.

AISO, J.

CLAY ROBBINS, JR., Clerk of the Court of Appeal, Second Appellate District, State of California, do hereby certify that the preceding is a true copy of the opinion filed in this cause as shown by the records of my office.

CLAY ROBBINS, JR., Clerk

By _____ Deputy

ORDER DUE

April 24, 1972

ORDER DENYING HEARING

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 3, Civil No. 38394

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

HILL

v.

HILL ET AL.

Appellants' petition for hearing DENIED.

FILED

APR 19 197

G. E. BISHEL, Clerk

S.

G. E. BISHEL, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the record of my office.

Witness my hand and the seal of the Court this 19th day of April A.D. 1972

By _____ Deputy Clerk

WRIGHT

Chief Justice

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IN THE SUPREME COURT OF THE UNITED STATES

No. 72-67

HORACE H. HILL, SR. and PAULINE A. HILL,

Petitioners,

vs.

CHARLEEN JO HILL,

Respondent.

RESPONDENT'S RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

Pursuant to the Court's direction to the Office of the Clerk to request that a response be filed in this case, and as requested by Michael Rodak, Jr., Clerk, by letter dated September 12, 1972, respondent, Charleen Jo Hill, hereby responds to the Petition for a Writ of Certiorari previously filed herein and prays that the Court deny the writ of certiorari.

STATEMENT OF CASE

Respondent concedes that the statement of the case as contained in petitioners' petition filed herein is a true and accurate statement of the case.

JURISDICTION

Respondent concedes that this Court has jurisdiction under 28 U.S.C. § 1257(3), but denies that there is a difference of opinion among state and circuit courts of appeals upon the point in question, which is an interpretation of a federal statute.

QUESTIONS PRESENTED

Respondent concedes that the questions as presented in petitioners' petition for writ of certiorari filed herein correctly state the issues involved.

REASONS FOR DENYING THE WRIT

The decision of the Court of Appeal, Second Appellate District, State of California, as officially reported in 23 Cal. App. 3d 760, a copy of which is attached to petitioners' petition, marked Appendix "A," and the case of *Stribling v. United States*, 419 F.2d 1350 (8th Cir. 1969), correctly construe the Servicemen's Group Life Insurance Act (38 U.S.C. § 765 *et seq.*), and aforesaid cases meet each and every argument that is presented by petitioners herein, as in each case the same arguments were advanced as are advanced herein.

The Court of Appeal, Second Appellate District, State of California, relied upon *Stribling v. United States,* 419 F.2d 1350, but did not hold that it was bound to follow the *Stribling* case, but did say that it was very compelling, and the arguments as presented in the *Stribling* case were very persuasive and the California court answered petitioners' arguments in an almost identical manner as the *Stribling* case answered the arguments presented therein for a liberal construction of the Servicemen's Group Life Insurance Act, as adopted in 1965.

Both of the aforesaid cases pointed out that a liberal construction of this Act would be in violation of the Congressional intent when the Act was adopted. Both cases further stated that a liberal construction of the Servicemen's Group Life Insurance Act would cause confusion in the Office of the Uniform Services and of the private insurance companies participating in the program, and would delay in numerous instances the proper person obtaining the proceeds of the insurance policies.

The above rationale is clear when all of the cases cited by petitioners and as shown by the annotations in 2 A.L.R. 2d 489 *et seq.* indicate the numerous disagreements as to whom the proceeds of life insurance policies should be paid upon the deaths of veterans of World War I, World War II, and the Korean War. This does not even take into account unreported decisions which were probably as numerous, or more so, than the reported ones. This is true because the liberal construction always necessarily brings in a question of fact, and it is common knowledge that when such disputed facts can change the results of who will receive moneys, this engenders and promotes litigation which results in long delay

of the payment of moneys which are the subject of any such litigation.

Since the Servicemen's Group Life Insurance Act of 1965 was enacted, there are only three cases, including this California decision, dealing with the construction of 38 U.S.C. § 770. The other cases are the *Stribling* case, *supra*, and *Davenport v. Servicemen's Group Life Insurance*, 119 Ga. App. 685. The *Davenport* case was not squarely in point, as it ruled that even under a liberal construction, the proof of the serviceman's intent to change the beneficiary of his life insurance policy was not sufficient and the proceeds were awarded to the named beneficiary on file in the Office of the Armed Services, which leaves us with only the instant case and the *Stribling* case as being the only two cases involved with the present Act, and it is common knowledge that the deaths occurring in Vietnam are very numerous and probably would have resulted in more litigation if the *Stribling* case had not been decided in 1969 by the Eighth Circuit Court of Appeals.

Respondent contends that the rationale in the California case from which this petition for a writ of certiorari arose and the *Stribling* case should be adopted as the proper construction of the Act of 1965, and of the Congressional intent when such Act was adopted.

Respectfully submitted,

KENNETH S. LAWSON

Attorney for Respondent

STATE OF CALIFORNIA)
) ss.
County of Orange)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Orange, State of California, over the age of eighteen years and not a party to the within action or proceeding; that

My business address is 326A Main Street, Huntington Beach, California 92648, that on OCTOBER 10th, 1972, I served the within RESPONDENT'S RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA on the following named parties by depositing two copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Huntington Beach, California, addressed to said parties at the addresses as follows:

FREDERIK W. CHEL
110 Pine Avenue, Suite 808
Long Beach, California 90802

RAYMOND C. SIMPSON
110 Pine Avenue, Suite 406
Long Beach, California 90802

I declare under penalty of perjury that the foregoing is true and correct.

Executed on OCTOBER 10th, 1972, at HUNTINGTON BEACH, CALIFORNIA.

D. A. Standefer

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